UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT PECCERILLO 3 Kathleen Court Staten Island, NY 10307	:	CIVIL ACTION
Plaintiff	:	
v.	:	NO.
METRO-NORTH COMMUTER RAILROAD COMPANY 420 Lexington Avenue, Suite 250 New York, NY 10170	:	

COMPLAINT
JURY TRIAL DEMANDED

FIRST CAUSE OF ACTION

1. Plaintiff Robert Peccerillo is an adult citizen who resides at 3 Kathleen Court, Staten Island, New York 10307.

2. Defendant Metro-North Commuter Railroad Company has an office at 420 Lexington Avenue, Suite 250, New York, NY 10170, and conducts business in the Eastern District of New York and maintains tracks, yards, offices, and personnel within this judicial district.

3. Plaintiff brings this action pursuant to the Federal Employers' Liability Act, 45 U.S.C.A. § 51-60, and Plaintiff avails himself of the rights, benefits, and immunities afforded him under said Act.

4. At all times material to this Complaint Plaintiff as employee and the Defendant as employer were engaged in acts and services substantially affecting interstate commerce.

5. On or about March 30, 2017, Metro-North employed Plaintiff Peccerillo as an elevator mechanic, and he was within the course and scope of his employment for Defendant Metro-North, and was working at Grand Central Station, Manhattan, New York, when he was caused to fall due to debris and materials on, about, and under stairs in the D Hall motor room.

6. As a direct result of Metro-North's negligence, as will be more fully set forth below, Plaintiff Peccerillo suffered injuries to his lumbar spine.

7. At the time and place of the occurrence in question, as previously described, Metro-North, acting through its agents, servants, and/or employees, was negligent in whole or in part in the following particulars:

(a) In failing to provide a safe place for Plaintiff to walk and descend stairs;

(b) In failing to inspect its premises for walking hazards;

(c) In failing to comply with all applicable building codes and OSHA regulations;

(d) In failing to provide adequate supervision; and

(e) In failing to provide a safe place to work;

8. As a result of the Defendant's negligence Plaintiff was caused to sustain the severe lumbar spine injuries. As a result of these physical injuries sustained by Plaintiff, he has been caused to undergo extensive medical treatment, and in all likelihood he will continue to incur medical treatment, for his injuries into the future. Plaintiff's injuries are permanent and disabling in nature, and Plaintiff has suffered and will continue to suffer pain and mental anguish in the future. In addition, by reason of these injuries, Plaintiff has been made to lose wages and

fringe benefits from his employment and Plaintiff's power and capacity to work and earn money in the future have been permanently impaired.

9. Plaintiff's medical care for his spine has included, but is not limited to the following:

DATE	PROVIDER	EVENT
3/30/17		Fall on stairs at work at Grand Central Station
3/31/17	Dr. Mahajan / Health Care Associates	[Mr. Peccerillo] is under Dr. Mahajan's care. He has an acute injury to his back. He cannot lift heavy objects due to his injury. Dr. Mahajan is putting Robert out of work until April 30. Any questions call us.
3/31/17	Dr. Mahajan / Health Care Associates	Prescription for Physical Therapy - Stretching & strengthening, ROM, modalities, 2-3x/week for 6-8 weeks stressing a home exercise program back.
4/3/17	Dr. Mahajan / Health Care Associates	1st injection in back
4/3/17	Dr. Mahajan / Health Care Associates	... seen in the office today. He received Bi-Lateral pain management injections at the L3-S1 lumbar area.
4/4/17	TLC Physical Therapy	Starts P/T for back
4/4/17	J. LaMendola Physical Therapy	Inj. Date: 3/30/17 ... Referral Physician: Nakul Mahajan ... Chief Complaints ... Pain and stiffness, decreased range of motion, decreased strength, decreased function / ADLs. History of Present Illness - 4/4/2017 - Pt with Lumbar Radiculopathy ... Tolerance to Daily Living; Initial Level: Patient experiences severe pain and limitation in a specific IADL affecting performance. Goal: No pain/limitation during and/or after a specific IADL. Tolerance to Recreational Activity: Initial Level: Severe pain and limitation in a specific recreational activity affecting performance. Goal: No pain/limitation caused by a specific recreational activity. Tolerance to Work Activity: Initial Level: Severe pain and limitation in a specific work activity affecting performance. Goal: No pain/limitation resulting from a specific work activity.

DATE	PROVIDER	EVENT
		Ambulation Stair Climbing: Patient ambulates with no assistive device independently with railing and difficulty. Goal of improvement by 50% in 6 to 8 weeks. Even Terrain: Patient ambulates with no assistive device independently with difficulty. Goal of improvement by 50% in 6 to 8 weeks. Exacerbating factors include bending, household chores, lateral rotation, sitting up from supine, squatting, stress, stretching, transferring, ambulating and/or stair climbing and twisting. ... Patient should continue therapy 3 times a week for 8 weeks. ...Patient Pain at rest is 4. Patient Pain with activity is 8. The Pain is characterized as sharp and radiating. ... Plan - Procedures: Therapeutic Exercises.
4/6/17	TLC Physical Therapy	P/T for back
4/6/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Air Resistance Leg Press: 3 sets x 10 reps. ... Bike-Recumbant: 10 minutes. Swiss Ball Supine Trunk Rotation: 3 sets x 10 reps. Total time: 8 minutes. Swiss Ball Supine Abdominal Crunches: 3 sets x 10 reps. Total time: 8 minutes. Swiss Ball Supine Trunk Flexion: 3 sets x 10 reps.
4/10/17	Dr. Mahajan / Health Care Associates	2nd injection in back
4/11/17	TLC Physical Therapy	P/T for back
4/11/17	J. LaMendola Physical Therapy	Daily Treatment Note
4/13/17	TLC Physical Therapy	P/T for back
4/13/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Therapeutic Exercises

DATE	PROVIDER	EVENT
4/14/17	Dr. Mahajan / Health Care Associates	MS 1 - Medical Report - Injury - Occupational - Initial Report ... Supv Name Juan Viscicano ... Date/Time of Onset: 3/30/17 7:40 am. Place of Onset: D Hall Elevator Motor Room. Describe the incident and the injury or illness which resulted: Due to 3rd shift emptying a cabinet under stair case, they stuffed it on top of it causing some cans of Lysol sticking up through steps, when I was coming down I - Date/Time/Location First Exam: 3/31/17 11:45 am. Diagnoses: lumbar spondylosis, lumbar disc disorder left knee arthritis. Low back pain. Constant throbbing, radiating into extremity on occasion. Nature of Present Treatment: lumbar median branch of RFA of lumbar pending authorization. ... 4/10/17. Is Treatment Continuing: Yes. ... May Condition Result in Permanent Deformity, Restriction, Loss of Function, or Disfigurement: Yes. ... Chronic pain at variable levels of intensity, may persist. First Date Unable to Work Full Time - 3/31/17. ... Prognosis: chronic [?]. Do you feel that this current injury/illness resulted from the incident described in 1C above? Yes. List consultants and diagnostic procedures planned: pending authorization for L L3-S1 RFA x1 WIMC this should provide over 50-75% sustained pain relief.
4/14/17	TLC Physical Therapy	P/T for back
4/14/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Therapeutic Exercises
4/18/17	TLC Physical Therapy	P/T for back
4/18/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Therapeutic Exercises
4/20/17	TLC Physical Therapy	P/T for back
4/14/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Therapeutic Exercises
4/21/17	TLC Physical Therapy	P/T for back
4/21/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Therapeutic Exercises

DATE	PROVIDER	EVENT
4/24/17	Open MRI Medical Imaging Center Of North Jersey Inc.	MRI of the Lumbar Spine Without Contrast ... 1. Moderate disc bulging at L5/5 impressing on the anterior thecal sac and moderately narrowing the lateral recesses at this level. 2. Mild disc bulging is present at L1/2 impressing on the anterior thecal sac at this level. 3. Mild disc bulging is present at L5/S1 effacing the anterior epidural fat at this level. 4. 2.0 cm focus of abnormal signal is present within the right posterior aspect of the T12 vertebral body extending to the pedicle. Findings most consistent with a bony cystic lesion. Other underlying pathology cannot be excluded. Clinical correlation and correlation with plain film findings or a gadolinium enhanced MRI exam of the theracolumbar spine suggested for more definitive evaluation and to assure stability.
4/25/17	Shannon Gearhart, M.D.	Occupational Health Services ... Reason for Visit: ... Incident revisit ... Temporarily Not Qualified. Follow-Up Visit scheduled for 6/23/17.
5/18/17	Dr. Landa / Landa Spine & Orthopedic Center	[Mr. Peccerillo] can work at the following duty with the listed restrictions based on his/her injury/injuries to the: Lumbar Spine. *No Work: [Mr. Peccerillo] is on a no work status. No work until approximately 7/10/17. ... current work status is in effect for 8 weeks from the exam date listed above.*

DATE	PROVIDER	EVENT
5/25/17	Dr. Cho	**Initial Consultation** ... Referred By: Dr. Landa.... presents with low back pain that started after falling down the steps when he slipped on canisters left under the steps by someone else. This happened while [Mr. Peccerillo] was working. The low back pain is constant with radiation of pain down the left lower extremity. 5-7 on VAS. There is subjective weakness but no numbness/tingling noted in the lower extremity. No bowel or bladder dysfunction. The pain worsens with prolonged standing, walking, extension at the lumbar spine, ADLs and routine range of motion. [Mr. Peccerillo] reports difficulty with ADLs and sleeping secondary to pain. [Mr. Peccerillo] is taking an anti-inflammatory for pain control. Therapy has been helping. Lumbar epidural injections helped in the past. ... Past Surgical History: Left knee surgery x 2. ... Physical Examination ... Walks with a cane. WD, WN male [Mr. Peccerillo] in mild distress. Lumbar Spine: Severely decreased ROM with bilateral rotation, flexion and extension. Positive paraspinal tenderness. Straight leg raise test is negative. Myospasms. Positive facet loading and tenderness. ... Differential Diagnoses: 1) Lumbar spondylosis. 2) Lumbar radiculitis. 3) Lumbar disc bulges. 4) Lumbar strain and sprain. 5) Myospasm. Recommendations: 1) Continue therapy three times a week for four weeks. The goal is to diminish pain and improve range of motion and function. 2) Recommend bilateral L3/4, L4/5 and L5/S1 facet diagnostic injection as [Mr. Peccerillo] suffers from facetogenic low back pain. All r/b/a were explained to [Mr. Peccerillo]; [Mr. Peccerillo] wishes to proceed. 3) RTC 1 wk post injection.
6/8/17	Dr. Cho at Ambulatory Surgery Center at Old Bridge	Postoperative Diagnosis: Lumbar spondylosis without myelopathy or radiculopathy. Procedure Performed: Bilateral L3-L4,1,4-5 and 1.5-S1 facet diagnostic injection under fluoroscopy.

DATE	PROVIDER	EVENT
6/19/17	Dr. Cho	... presents status post lumbar facet injection that provided about 80% relief for about 3 days. The low back pain is constant with radiation of pain down the left lower extremity. 5 on VAS. There is subjective weakness but no numbness/tingling noted in the lower extremity. No bowel or bladder dysfunction. The pain worsens with prolonged standing. walking, extension at the lumbar spine, ADLs and routine range of motion. [Mr. Peccerillo] reports difficulty with ADLs and sleeping secondary to pain. [Mr. Peccerillo] is taking an anti-inflammatory for pain control. Therapy has been helping. ... Physical Exam: ... Lumbar Spine: Decreased ROM with bilateral rotation, flexion and extension. Positive paraspinal tenderness. Straight leg raise test is negative. Myospasms. Positive facet loading and tenderness. 1. Continue therapy three times a week for four weeks. The goal is to diminish pain and improve range of motion and function. 2. Recommend bilateral L3/4, L4/5 and L5/S1 medial branch nerve radio ablation as [Mr. Peccerillo] suffers from facetogenic low back pain. All r/b/a were explained to [Mr. Peccerillo]; [Mr. Peccerillo] wishes to proceed. 3. RTC 2 weeks post injection.
7/3/17	Dr. Cho at Ambulatory Surgery Center At Old Bridge	Postoperative Diagnosis: Lumbar spondylosis without myelopathy or radiculopathy. Procedure Performed: Bilateral L3-5, L4-5 and L5-SI median branch nerve Radio frequency ablation.

DATE	PROVIDER	EVENT
7/17/17	Dr. Cho	... status post lumbar medial branch nerve radio ablation and reports about 50% relief. The low back pain is constant with radiation of pain down the left lower extremity. 3-4 on VAS. There is subjective weakness but no numbness/tingling noted in the lower extremity. No bowel or bladder dysfunction. The pain worsens with prolonged standing, walking, extension at the lumbar spine, ADLs and routine range of motion. [Mr. Peccerillo] reports difficulty with ADLs and sleeping secondary to pain. [Mr. Peccerillo] is not taking anything for pain control. Therapy has been helping. ... [Mr. Peccerillo] is awake, alert. and oriented x3. Walks with a cane. WD, WN male [Mr. Peccerillo] in mild distress. Lumbar Spine: Decreased ROM with bilateral rotation, flexion and extension. Positive paraspinal tenderness. Straight leg raise test is negative. Myospasms. Positive facet loading and tenderness. Diagnosis: Spondylosis W/o Myelopathy Or, Radiculopathy, Lumbar Region, Other Intervertebral Disc Disorders, Lumbar Region, Radiculopathy, Lumbar Region, Sprain Of Ligaments Of Lumbar Spine, Subsequent Encounter, Spasm Of Muscle, Unspecified Site ... Inject Trigger Points =/> 3 ... Care Plan: Continue therapy three times a week for four weeks. The goal is to diminish pain and improve range of motion and function. Recommend repeat lumbar trigger point injection. RTC in 4 wks for re-evaluation.

DATE	PROVIDER	EVENT
7/24/17	Dr. Cho	Medical Report ... Because 3rd shift took equipment and cleaning solutions out of cabinet under staircase and placed it on top and it was sticking up I fell down the staircase after stepping on top of a can of Lysol sticking up through steps. Date/Time/Location First Exam: 5/25/17. Diagnoses: Lumbar radiculopathy, lumbar sprain, lumbar spondylosis. ... Low back pain, decreased range of motion, and paraspinal tenderness, myospasms. Nature of Present Treatment: physical therapy, radio frequency ablation, follow up appts with Dr. Cho. ... May Condition Result in Permanent Deformity, Restriction? Yes ... [?] flares up, [Mr. Peccerillo] will have difficulty pushing, pulling ... Restricted Duty ... List Work Restrictions ... No lifting, pushing, picking up, pulling over 20 lbs, unknown.
7/24/17	Dr. Cho, Interventional Pain Management	Date/Time/Location First Exam: *5/25/17*. Diagnoses: *Lumbar radiculopathy, lumbar sprain, lumbar spondylosis*. Present Conditions/Findings: *Low back pain decreased range of motion, and spond paraspinal tenderness, myospasms. Nature of Present Treatment: physical therapy, radio frequency ablation, follow up appts. w/Dr. Cho*. ... 7/17/17 ... May Condition Result in Permanent Deformity, Restriction, Loss of Function, or Disfigurement? *Yes* ... Describe, if yes: *when flares up, [Mr. Peccerillo] will have difficulty pushing, pulling and lifting* ... First Date Unable to Work Full Time: *5/25/17*. ... If Not Working, Date of Return to Restricted Duty: *7/24/17*. List Work Restrictions: *No lifting, pushing, picking up, pulling over 20 lbs*. Prognosis: *unknown*. ... follow up visit on 8/14/17, treatment plan will be discussed.
8/8/17	Dr. Cho	Mr. Peccerillo has been under my care since May 25th, 2017 for low back pain with radiculopathy, lumbar sprain and lumbar spondylosis due to work related injury on March 30th, 2017. As a result of his injury, [Mr. Peccerillo] is unable to lift push, pull and /or pick up anything greater than 20lbs. [Mr. Peccerillo's] prognosis is unknown however he is actively participating in physical therapy. The goal is to diminish pain and improve range of motion and function.

DATE	PROVIDER	EVENT
8/14/17	Dr. Cho	Prescription for Physical Therapy; 2-3x for 4 weeks for "LBP"
8/14/17	Dr. Cho	The patient is a 56-year-old right-handed male presents status post lumbar facet injection that provided 80% relief for about 3 days. The patient is status post lumbar medial branch nerve radioablation and reports some relief. The low back pain is consistent with minimal radiation of pain down left lower extremity. 6-7 on VAS. There is subjective weakness but no numbness/tingling noted in the lower extremity. No bowel or bladder dysfunction. The pain worsens with prolonged standing, walking, extension at the lumbar spine, ADLs and routine range of motion. The patient reports difficult with ADLs and sleeping secondary to pain. The patient is taking an anti-inflammatory for pain control. Therapy has been helping. ... Lumbar Spine: Decreased ROM with bilateral rotation, flexion and extension. Positive parsaspinal tenderness. Straight leg raise test is negative. Myospasms. Positive facet loading and tenderness.
8/21/17	TLC Physical Therapy	P/T for low back resumes
8/21/17	J. LaMendola Physical Therapy	Reason for Visit - Pain and stiffness, decreased range of motion, decreased strength, decreased function / ADLs. Work related injury. Patient Complaint - 8/21/17: Patient reports pain and difficulty performing ADLs such as prolong sitting, standing, walking and stair neg. ... 4/4/2017 - Pt with Lumbar Radiculopathy. 8/21/17: Patient returns to PT for his L/S pain. Patient recently had a left TKR. Pain is into the low back and into the gluteal region. ... Assessment - 8/21/17: Patient is a 56 y/o male who presents with difficulty performing ADLs due to pain, stiffness ,ROM and strength deficits secondary to L/S radiculopathy. Lumbar radiculopathy (M54.16).
8/24/17	TLC Physical Therapy	P/T for low back

DATE	PROVIDER	EVENT
8/24/17	J. LaMendola Physical Therapy	Referral Physician: John S. Cho ... Daily Treatment Note ... Lumbar Pain: Patient Pain at rest is 4. Patient Pain with activity is 7. The Pain is characterized as sharp, radiating and localized. Therapeutic Exercises.
8/28/17	TLC Physical Therapy	P/T for low back
8/28/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Therapeutic Exercises Lower Extremities
8/30/17	TLC Physical Therapy	P/T for low back
8/30/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Therapeutic Exercises Lower Extremities
9/4/17	TLC Physical Therapy	P/T for low back
9/4/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Therapeutic Exercises Lower Extremities ... Lumbar Pain: Patient Pain at rest is 4. Patient Pain with activity is 7. The Pain is characterized as sharp, radiating and localized.
9/6/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Lumbar Pain: Patient Pain at rest is 4. Patient Pain with activity is 7. The Pain is characterized as sharp, radiating and localized.
9/11/17	Dr. Cho	Present Conditions/Findings: *low back pain, decreased ROM, R paraspinal tenderness, myospasms*. Nature of Present Treatment: *physical therapy, treatment to be determined by follow up appts. with Dr. Cho*. Date Most Recent Treatment: *9/11/17*. ... First Date Unable to Work Full Time: *5/25/17*. ... If Not Working, Date of Return to Restricted Duty: *11/1/17*. List Work Restrictions: *No lifting, pushing, pulling*.

DATE	PROVIDER	EVENT
9/11/17	Dr. Cho	The patient is a 56-year-old right-handed male presents status post lumbar facet injection that provided 80% relief for about 3 days. The low back pain is constant with minimal radiation of pain down left lower extremity. 6 on VAS. There is subjective weakness but no numbness/tingling noted in the lower extremity. No bowel or bladder dysfunction. The pain worsens with prolonged standing, walking, extension at the lumbar spine, ADLs and routine range of motion. The patient reports difficult with ADLs and sleeping secondary to pain. The patient is taking an anti-inflammatory for pain control. Therapy has been helping. ... Lumbar Spine: Decreased ROM with bilateral rotation, flexion and extension. Positive parsaspinal tenderness. Straight leg raise test is negative. Myospasms. Positive facet loading and tenderness.
9/11/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Therapeutic exercises x 15 minutes per unit with Direct Contact by Licensed Physical Therapist.
9/13/17	J. LaMendola Physical Therapy	Ambulation Stair Climbing: Patient ambulates with no assistive device independently with railing and difficulty.
9/20/17	J. LaMendola Physical Therapy	Pain is into the low back and into the gluteal region. ... Daily Treatment Note
9/21/17	J. LaMendola Physical Therapy	Daily Treatment Note
9/25/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Lumbar Pain: Patient Pain at rest is 4. Patient Pain with activity is 7. The Pain is characterized as sharp, radiating and localized.
9/27/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Therapeutic exercises x 15 minutes per unit.
10/2/17	J. LaMendola Physical Therapy	Daily Treatment Note ... Lumbar Pain
10/4/17	J. LaMendola Physical Therapy	Daily Treatment Note

DATE	PROVIDER	EVENT
10/9/17	J. LaMendola Physical Therapy	The patient's chief complaint is pain and stiffness, decreased range of motion, decreased strength, decreased function/ADLs and inability to work.
12/4/17	Ambulatory Surgery Center / Dr. Cho	Robert Peccerillo was seen at our surgery center today for an epidural.
12/18/17	Dr. Cho	Diagnosis: Lumbar radiculopathy, spondylosis. Present Condition/Findings: low back pain, decreased ROM, and paraspinal tenderness myospasms. Nature of present treatment: physical therapy treatment to be determined by [?] [?] with Dr. Cho. Estimated terminating date: unknown. ... Work Restrictions: no lifting, pushing, pulling at all.

10. The Plaintiff claims damages against the Defendant in the amount to be shown by the evidence at the time of trial for his physical and mental injuries, for his pain and suffering, past, present and future; for his loss of earnings and benefits during the period of time that he was disabled; for his loss of earning capacity and benefits in the future by reason of the injuries he has received; and for his expenses of medical treatment.

WHEREFORE, the Plaintiff prays that he have judgment against Defendant in an amount in excess of $250,000, plus costs, interest as allowable by law, and other remedies at law or in equity, as the Court may deem just and proper.

SECOND CAUSE OF ACTION

11. Plaintiff incorporates by this reference the averments set forth above.

12. Defendant employed Plaintiff as am elevator mechanic from December, 2005, to March 30, 2016.

13. While Defendant employed Plaintiff the Defendant exposed him to musculoskeletal stressors such that he slowly developed occupationally induced musculoskeletal injuries and disease(s) to his left knee such that his left knee needed surgical replacement.

14. Plaintiff's on the job exposure to risk factors for the development of knee related musculoskeletal disorders took place at Grand Central Station in Manhattan.

15. On most of the many days that Plaintiff worked at Grand Central Station - which are too numerous to list individually - he serviced, maintained, and repaired elevators. When performing these tasks Plaintiff was required to repetitively squat, kneel, climb, and lift heavy objects, and similar awkward and repetitive postures involving his knees.

16. Upon information and belief there is epidemiological evidence which supports an association between the awkward postures and the activities described above and musculoskeletal disorders involving knees.

17. Upon information and belief Plaintiff's long term, repetitive exposure to the commonly accepted risk factors for the knees included:

1. Kneeling;
2. Squatting;
3. Climbing;
4. Lifting heavy objects; and
5. Awkward postures.

18. Mr. Peccerillo was regularly exposed to those musculoskeletal risk factors on those days when he worked for Metro-North between when he started working for Metro-North and when he marked off work, while performing his work as an elevator mechanic.

19. At the times and places of the work in question, as previously described, the Defendant, acting through its agents, servants, and/or employees, was negligent in whole or in part in the following particulars, but not limited to these:

19.1 In failing to provide Plaintiff with a reasonably safe place in which to work;

19.2 In failing to provide appropriate equipment with which to work;

19.3 In failing to provide adequate supervision, tools, and manpower; and

19.4 In assigning Plaintiff work which it knew, or should have known, would place him at risk of developing harmful musculoskeletal conditions.

19.5 In failing to perform an appropriate ergonomic worksite or job analysis of any of the jobs that Mr. Peccerillo performed prior to his injury.

19.6 In failing to train Mr. Peccerillo to recognize early symptoms of musculoskeletal disorders, or encourage him to report cumulative trauma disorder symptoms at their onset.

19.7 In failing to implement a comprehensive plan to control the hazards of exposure to knee ergonomic risk factors for elevator mechanics like Mr. Peccerillo.

19.8 In failing to medically monitor its employees for early recognition and accurate diagnosis of work related musculoskeletal disorders; specifically Metro-North has not performed symptom probes as suggested by the AAR.

19.9 In failing to have a comprehensive ergonomics program consistent with published guidelines for the prevention of work related musculoskeletal disorders.

19.10 In failing to perform comprehensive worksite and job evaluations for knee ergonomic risk factors to which elevator mechanics like Mr. Peccerillo were exposed.

19.11 In failing to implement a medical management program, including medical monitoring, symptom probes, and early reporting, to treat and control knee work-related musculoskeletal disorders.

19.12 By not implementing a comprehensive ergonomics program, Metro-North violated ergonomic principles adhered to by reasonable industrial employers.

20. As a result of Plaintiff's injuries to his knee he has undergone extensive medical treatment, and in all likelihood he will continue to incur medical treatment for his injuries into the future. His medical care has consisted, in part, of the following:

DATE	PROVIDER	EVENT
11/23/16	Regional Radiology	MRI Knee Without ... History: Left knee pain. History of arthroscopic knee surgery in 2009 ... Impression: Suggestion of partial medial meniscectomy. Focal linear signal, suggesting partial-thickness oblique tear superior surface posterior horn of the medial meniscus. Suggestion of ACL insufficiency. Medial compartment femorotibial and patellofemoral chondromalacia with small knee joint effusion.

DATE	PROVIDER	EVENT
1/9/17	Dr. Seidenstein / Hartzband Center for Hip and Knee Replacement	Where is your pain located? *Hip, Knee* ... Which side? *Right/Left*. How long have you had pain? *Left knee/right hip. I can walk at a slow pace*. Does the pain wake you at night? *Yes, sometimes*. Have you had Physical Therapy? *Yes*. Did it help? *No*. Have you had injections? *Yes, Cortisone*. Have you had surgery for this? *No. Pain when walking, hurts more when carrying things. Constant cracking, stiff.* ... Previous surgeries: Orthopaedic: Left knee ... He presented with right hip pain. It is located in the groin and radiates to knee. The symptom started several months ago exacerbated and several years ago. The pain is a dull ache, is worsening and is chronic. [Mr. Peccerillo] states the pain is severe. [Mr. Peccerillo] complains of functional limitations including: activities of daily living, increased pain with weight bearing, getting in and out of car, arising from a chair, walking for more than several blocks and startup pain. [Mr. Peccerillo] has tried physical therapy/home program without significant functional improvement. [Mr. Peccerillo] has taken the following NSAID's with minimal functional improvement: Meloxicam.

DATE	PROVIDER	EVENT
		Previous treatment has included: activity modification and rest. They have tried prior treatments for > 12 weeks. Episodes occur activity related, after inactivity and intermittent. The symptom is sudden in onset, gradual in resolution and ongoing. Mechanism of injury includes moderate energy. The symptom is exacerbated by activity, flexion of the hip and internal rotation of the hip. It is radiating to radiates to the knee. Pertinent findings include pain at rest, pain with movement and stiffness. In addition, he presented with left knee pain. It is located in the anterior region and at the medial joint line. The symptom started several years ago. The pain is worsening, is chronic and is a dull pain. [Mr. Peccerillo] states the pain is severe. [Mr. Peccerillo] complains of functional limitations including: activities of daily living, increased pain with weight bearing, going upstairs, going downstairs, walking for more than several blocks and startup pain. [Mr. Peccerillo] has tried physical therapy/home program without significant functional improvement. [Mr. Peccerillo] has taken the following NSAID's with minimal functional improvement: Meloxicam. [Mr. Peccerillo] has had the following injection: Corticosteriod with no improvement. Previous treatment has included: rest. They have tried prior treatments for > 12 weeks. Mechanism of injury includes unknown. Episodes occur activity related and after inactivity. The symptom is sudden in onset and gradual in resolution.

DATE	PROVIDER	EVENT
		Pertinent medical conditions include prior history of meniscal tear. The symptom is exacerbated by weight bearing. Pertinent findings include pain with movement and stiffness. [Mr. Peccerillo] presents for evaluation of left knee pain and right hip pain. With respect to his left knee, [Mr. Peccerillo] is status post left knee arthroscopy for torn meniscus in 2009 performed by Dr. Sherman in Staten Island, NY. He was doing well with his left knee until 2 months ago when he started to experiencing discomfort with swelling in his left knee. He presented to an outside orthopedist who performed a corticosteroid injection to his left knee 2 weeks ago which has not provided significant relief. Today, [Mr. Peccerillo] locates his discomfort on his left knee medially and anteriorly. He has difficulty negotiating stairs, downstairs more so than upstairs. With respect to his right hip, [Mr. Peccerillo] states that he has had discomfort with his right hip for the past several years and this was exacerbated from a fall in Spring 2016. He locates his discomfort in his groin that radiates down to his right knee. He has difficulty performing normal daily activities such as arising from seated position and walking a distance. [Mr. Peccerillo] takes Meloxicam for pain management of his right hip and left knee discomfort. [Mr. Peccerillo] works as an elevator mechanic and is on his feet for the majority of his work day. ...

DATE	PROVIDER	EVENT
		Unilateral primary osteoarthritis, left knee. Unilateral primary osteoarthritis, right hip ... 5' 10", 235 lbs , BMI: 33.7 ... Right Hip: Examination- palpation - no tenderness about the greater trochanter; resisted supine straight leg raise - reproduces pain; resisted active hip flexion in seated position reproduces pain; forced internal rotation - reproduces pain; active Range of motion - discomfort with internal rotation, flexion and abduction, restricted with pain and thigh externally rotates with hip flexion; passive Range of Motion causes pain and restricted; motor strength - examination is good but limited secondary to pain; stability - no instability noted; skin - intact without gross lesions; gait- trendelenburg; leg Length Discrepancy none noted. Left Knee: Varus Knee- alignment varus and fixed; stability stable; effusion noted; active Range of Motion 0-135 degrees and restricted with pain; passive Range of Motion restricted and causes pain; crepitus noted; joint Line Tenderness medially; patellofemoral grind test positive; quadriceps weakness noted; skin intact and no gross lesions; gait- antalgic ...
		Impression/Pan: MRI of the right hip performed on 6/30/16 shows Focal, partial-thickness gluteus maximus insertional tear to the iliotibial band. Labral degeneration with no tear. Right hamstring origin tendinosis with partial-thickness deep fiber tear. No bone marrow contusion or fracture. MRI of the left knee performed on 11/23/16 shows: Suggestion of partial medial meniscectomy. Focal linear signal, suggesting partial-thickness oblique tear superior surface posterior horn of the medial meniscus. Suggestion of ACL insufficiency. Medial compartment femorotibial and patellofemoral chondromalacia with small knee joint effusion. Impression: Osteoarthritis of the left knee. ... [Mr. Peccerillo] feels that his left knee discomfort is more severe than his right hip at this time. ... [Mr. Peccerillo] is not ready for surgery at this time. We discussed realistic non-operative treatment options.

DATE	PROVIDER	EVENT
4/27/17	Dr. Seidenstein at Hartzband Center For Hip & Knee Replacement at Holy Name Medical Center	Operative Report ... Postoperative Diagnosis: Osteoarthritis of the left knee. Procedure: Left total knee arthroplasty.
5/9/17	Dr. Seidenstein / Hartzband Center for Hip and Knee Replacement	Lower Venous Examination - Test Performed: Venous Duplex (Complete) ... Right: There was no evidence of deep or superficial venous thrombosis. Left: There was no evidence of deep or superficial venous thrombosis.
5/10/17	Dr. Seidenstein / Hartzband Center for Hip and Knee Replacement	... 2 weeks status post knee replacement. ... doing well overall and has no major complaints ... actively participating in physical therapy. ... ambulating with a cane. ... lower extremity significant edema present. ... Continue PT ... He also understands the importance of wearing his knee immobilizer.
6/7/17	Dr. Seidenstein / Hartzband Center for Hip and Knee Replacement	... 6 weeks s/p knee replacement. ... doing well overall and has no major complaints ... has been actively participating in physical therapy. ... has been taking OTC medication for pain control and management.
6/7/17	Dr. Mark Sherman at Staten Island Orthopedics & Sports Medicine	Prescription for P/T (left knee) 3x p/2 for left knee
6/7/17	Hartzband Center for Hip & Knee Replacement	Term of Therapy: 3 times a week for 6 weeks. ... Pain in left knee ... Presence of left artificial knee joint ... Unilateral primary osteoarthritis, left knee ... FWBAT, SLR's, PRE's, Push ROM 0-130, Gait training, Home program, Begin ankle weights, Modalities, Strengthening, Stretching.
8/1/17	Dr. Mark Sherman at Staten Island Orthopedics & Sports Medicine	Prescription for P/T (left knee) 3x p/w for 6 weeks

DATE	PROVIDER	EVENT
8/1/17	Dr. Seidenstein / Hartzband Center for Hip and Knee Replacement	[Mr. Peccerillo] reports residual left knee soreness. It is located Left Knee. The procedure performed was left TKA. [Mr. Peccerillo] states they have moderate discomfort. This is a 3 month evaluation. ... He reports that his left knee is doing well overall and feels he is continuing to progress. He does complains of some residual soreness in his left knee and quadriceps especially after having been on his feet all day and negotiating stairs. He did participate in some physical therapy but did not complete a full course of out-patient physical therapy. [Mr. Peccerillo] works as an elevator mechanic and does not feel ready to return to work at this time. ... An additional course of physical therapy is recommended. ... [Mr. Peccerillo] was given a note that he may remain out of work for another 6 weeks.
8/1/17	Hartzband Center for Hip & Knee Replacement	Term of Therapy: 3 times a week for 6 weeks. ... Pain in left knee ... Presence of left artificial knee joint ... Unilateral primary osteoarthritis, left knee ... FWBAT, SLR's, PRE's, Push ROM 0-130, Gait training, Home program, Begin ankle weights, Modalities, Strengthening, Stretching.
9/13/17	Dr. Seidenstein / Hartzband Center for Hip and Knee Replacement	[Mr. Peccerillo] reports good pain relief and restoration of function. The procedure performed was left TKA. [Mr. Peccerillo] states they have no pain. This is a 5 month evaluation. ... Overall he is doing well with his left knee and has no major complaints related to it. He does complain of some stiffness and muscle weakness but feels this has been continuing to improve with time. He has returned to his normal daily activities without limitations regarding his left knee. ... The natural history of TKA was discussed with [Mr. Peccerillo] in detail. Recovery is gradual and may take 1-2 years. [Mr. Peccerillo] understands complaints such as difficulty rising from a chair, going up and down stairs, numbness on the side of the knee, heaviness, clicking and difficulty sleeping are not uncommon at this time frame in their recovery. [Mr. Peccerillo] will try physical therapy to improve strength, range of motion and gait.

DATE	PROVIDER	EVENT
11/6/17	Dr. Seidenstein	He presented for interim evaluation. The patient reports good pain relief and restoration of function. It is localized left knee. The procedure performed was left TKA. The patient states they have no pain. This is a 6 month evaluation. Patient presents today for 6 month evaluation status post left TKA. Overall, patient is doing well with respect to his left knee and feels that he continues to improve. He has no major complaints regarding his left knee at this time. He continues to experience difficulty negotiating stairs. He denies any fevers, chills, or constitutional symptoms. He denies mechanical symptoms. ... The natural history of TKA was discussed with the patient in detail. Recovery is gradual and may take 1-2 years. The patient understands complaints such as difficulty rising from a chair, going up and down stairs, numbness on the side of the knee, heaviness, clicking and difficulty sleeping are not uncommon at the time frame in their recovery. I recommended he work on quadriceps strengthening with ankle weights or at a gym. A prescription for work hardening was given to the patient. The patient will try physical therapy to improve strength, range of motion and gait, with an emphasis on quadriceps strengthening and stair training. They understand that this may improve their symptoms and that they will need to continue exercising at home or a gym at the completion of physical therapy to maintain the benefits of the physical therapy program. The patient will follow up for evaluation in 6 weeks.
12/18/17	Dr. Cho	Diagnosis: Lumbar radiculopathy, spondylosis. Present Condition/Findings: low back pain, decreased ROM, and paraspinal tenderness myospasms. Nature of present treatment: physical therapy treatment to be determined by [?] [?] with Dr. Cho. Estimated terminating date: unknown. ... Work Restrictions: no lifting, pushing, pulling at all.

21. Plaintiff's knee disorders are permanent and disabling in nature, and Plaintiff has suffered, and will continue to suffer, severe pain and mental anguish.

22. As a result of Plaintiff's long term over exposure to the risk factors for the development of the aforementioned knee disorders, Mr. Peccerillo is physically unfit for employment at his previous occupation and as a result has sustained substantial economic damages in that his capacity to earn money in the future has been permanently impaired.

23. As a direct result of Plaintiff's knee injuries he has suffered mental and emotional injuries.

24. Plaintiff claims damages against the Defendant in an amount to be shown by the evidence at the time of trial for his injuries, for his pain and suffering, past, present and future, mental and physical; for his loss of earnings during the period of time that he has been disabled; for his loss of earning capacity by reason of the injuries he has received; and for his expenses of medical treatment and physical therapy and medications.

WHEREFORE, the Plaintiff prays that he have judgment against the Defendant in an amount in excess of this Court's jurisdictional minimum, plus costs as allowed by law, plus post judgment interest, and such other remedies at law or in equity as the Court may deem just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Respectfully submitted,

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A Member Of The Bar Of The
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COMMONWEALTH OF PENNSYLVANIA :
SS
CITY OF PHILADELPHIA :

VERIFICATION

I, David L. Lockard, Esquire, hereby state that I am counsel for the plaintiff in this action and verify that statements made in the foregoing COMPLAINT are true and correct to the best of my knowledge, information and belief. I understand that the statements therein are made subject to penalties of the applicable rules relating to unsworn falsification to authorities.

DAVID L. LOCKARD
Counsel for Plaintiff

DATED: 1/4/2018